PERDANA INDUSTRI HOLDINGS BHD

v.

ABDUL MULOK AWANG DAMIT

HIGH COURT MALAYA, KUALA LUMPUR
ZULKEFLI AHMAD MAKINUDIN J
[CIVIL SUIT NO: D3-22-1046-1997]
12 JULY 2003

CIVIL PROCEDURE: *Execution - Stay - Plaintiff obtained judgment against defendant - Special Administrators subsequently appointed for plaintiff under s. 41 Pengurusan Danaharta Nasional Berhad Act 1998 - Effect of Moratorium - Whether hearing of defendant's application for stay can proceed during subsistence of Moratorium*

This was the defendant's application to the High Court for a stay of execution pending his appeal to the Court of Appeal against an order of the High Court affirming the decision of the senior assistant registrar granting summary judgment in the sum of RM2.5 million in favour of the plaintiff company. At the hearing of the application, the plaintiff raised the following preliminary issue: whether the court can proceed to hear the defendant's application for a stay of execution notwithstanding the fact that a Moratorium had come into effect pursuant to the appointment of Special Administrators for the plaintiff under s. 41 of the Pengurusan Danaharta Nasional Berhad Act 1998 ('the Danaharta Act').

Held:

[1] There were no legal impediments to the court proceeding with the hearing of the defendant's application. This was because s. 30 of the Danaharta Act read together with the Second Schedule thereto would allow the plaintiff to defend any action or legal proceedings through the Special Administrators. The Special Administrators were empowered to bring or defend any action or other legal proceedings in the name and on behalf of the plaintiff. (p 665 a)

[2] The plaintiff had obtained judgment against the defendant prior to the appointment of the Special Administrators. Therefore, the Special Administrators would be entitled, under the powers granted to them by the Danaharta Act, to take steps to enforce the said judgment. Likewise, the

defendant would be entitled to apply for a stay of execution or take steps to counter any action taken by the Special Administrators, and the court would **not** be precluded from hearing the matter despite the Moratorium. (p 665 c-e)

[Hearing of defendant's application for stay to proceed.]

Case(s) referred to:

Franky Construction Sdn Bhd v. MEC Industrial Park Sdn Bhd [2002] 6 MLJ 212 HC ***(refd)***

Tan Sri Dato' Tajuddin Ramli v. Pengurusan Danaharta Nasional Bhd [2002] 2 CLJ 758 HC ***(refd)***

Legislation referred to:

Pengurusan Danaharta Nasional Berhad Act 1998, s. 41(1)
Rules of the High Court 1980, O. 14

For the plaintiff - Joseph Yeo; M/s Joseph Yeo
For the defendant - Jagdish Kaur; M/s Rakhbir Singh & Co

Reported by Gan Peng Chiang

JUDGMENT

Zulkefli Ahmad Makinudin J:

This is the defendant's application in encl. (27) that all execution proceedings by the plaintiff against the defendant be stayed until a final decision is obtained from the Court of Appeal against the Order made by this court dated 4 December 1998. The relevant facts of this case are as follows:

(1) On 18 October 1997 the plaintiff herein commenced proceedings to recover a sum of RM2.5 million from the defendant.

(2) On 27 May 1998 the learned senior assistant registrar granted judgment for the plaintiff's application pursuant to O. 14 against the defendant for the sum claimed together with interest and costs.

(3) The defendant appealed to the judge in chambers. On 4 December 1998 the learned judge dismissed the appeal with costs. The defendant has appealed to the Court of Appeal.

(4) On 28 July 1999 Lim San Peen was appointed a Special Administrator of the plaintiff. Yap Wai Fun was appointed on 10 October 2001. The appointments were made pursuant to the Pengurusan Danaharta Nasional Berhad Act 1998 ('the Act").

(5) Pursuant to s. 41 of the Act, on the appointment of the Special Administrators, a moratorium took effect.

(6) During the moratorium certain action may not be taken or done in respect of the plaintiff without the prior written consent of Pengurusan Danaharta Nasional Berhad. This is set out in s. 41(1)(a) to (g) of the Act.

(7) The moratorium is for a period of twelve (12) months and may be extended from time to time.

(8) The moratorium in respect of the plaintiff was last extended from 27 July 2002 to 28 July 2003. (See affidavit of Lim San Peen affirmed on 12-2-2002).

(9) On 8 July 2002 the defendant filed an application for a stay of execution of the judgment obtained against him.

On the date fixed for the hearing of the defendant's application in encl. (27) on 18 December 2002 learned counsel for the plaintiff raised a preliminary issue for a decision of this court as follows:

> whether the Court can proceed to hear the defendant's application notwithstanding that there exists a moratorium which took effect by virtue of the appointment of the Special Administrator under section 41 of the Pengurusan Danaharta Nasional Berhad Act 1998 ("the Act").

Decision Of The Court

At the outset I wish to state that the Act is a social legislation necessitated by the effect of the Asian economic crisis in 1998. (See the case of *Tan Sri Dato' Tajuddin Ramli v. Pengurusan Danaharta Nasional Berhad* [2002] 2 CLJ 758). It is aimed amongst others to assist the business sector with its financially distressed enterprises. This is achieved through the provisions of s. 41 of the Act. When Special Administrators are appointed to a company, like the plaintiff, the company is for the duration of the moratorium protected from *inter alia* any winding-up petition (see s. 41(1)(a) of the Act on the appointment of any receiver or manager). Further no proceeding or execution may be commenced or continued without the prior written consent of Pengurusan Danaharta Nasional Berhad (see s. 41(1)(e) of the Act). It is to be noted that the powers of the Special Administrators are provided under s. 30 and the Second Schedule of the Act which includes the power to bring or defend any action or legal proceedings in the name of and on behalf of the affected person. (See para. 8 of Second Schedule of the Act).

I am of the view that in the present case there is no legal impediment for the court to proceed with hearing the defendant's application for a stay. The said s. 30 and the Second Schedule of the Act allow the plaintiff to defend any action or legal proceedings through the Special Administrators. The Special Administrators are empowered to bring any action or legal proceeding for and on behalf of the plaintiff. Likewise they are also empowered to defend any action or other legal proceedings.

It is my considered view that the purpose of the moratorium is to give the company concerned a breathing space pending it setting its house in order. That is why no winding-up petition is allowed against the company and no proceeding or execution may be commenced without the prior written approval of Pengurusan Danaharta Nasional Berhad. In the instant case I find that the plaintiff has already commenced the proceedings herein and obtained judgment against the defendant. It is a proceeding initiated by the plaintiff before the appointment of the Special Administrator. Therefore the Special Administrator is by virtue of the powers granted to him entitled to take steps to enforce the judgment. The defendant likewise is entitled to apply for a stay or take steps to counter any action taken by the Special Administrator and this court is not precluded from hearing the matter. (See the case of *Franky Construction Sdn Bhd v. MEC Industrial Park Sdn Bhd* [2002] 6 MLJ 212). In the circumstances of this case it is my decision that the court can proceed to hear the defendant's application notwithstanding that there exists a moratorium which took effect by virtue of the appointment of the Special Administrator under s. 41 of the Act.